

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Crl.MC.No. 2413 of 2007()

SC.206/2003 of ADDL.ASSISTANT SESSIONS COURT, KOLLAM
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PETITIONER: ACCUSED NO.4:

ABDUL NASSAR MAHDANI, AGED 47,
S/O. ABDUL SAMAD, THOTTUVAL HOUSE, VENGA,
KARUNAGAPPALLY, NOW UNDER TRIAL PRISON IN THE
CENTRAL JAIL, COIMBATORE.

BY ADV. SRI.K.A.HASSAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 2413 of 2007

Dated this the 27th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 307 and 120B I.P.C. The petitioner was not available for trial for various reasons. It is not necessary for me to advert to facts in any greater detail. The co-accused, who are available, stood trial. They were found not guilty and acquitted. The petitioner has been detained by an order of a court at Coimbatore, which is trying the petitioner along with the co-accused. The petitioner continues in custody at Coimbatore. The petitioner hopes that he will be acquitted in the proceedings before the Coimbatore court, but may have to continue in custody because of the pendency of this case. The petitioner therefore prays that the proceedings against him may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The only reason urged is that the co-accused have already been acquitted. It is further submitted that on the evidence, which is available in the trial held against the co-accused, there is no material against the petitioner, which can expose

him to any criminal liability. In the trial against the co-accused, who are available, the prosecution is not obliged to adduce any evidence against the petitioner. The fact that in the trial against the co-accused there is no evidence against the absconding co-accused is certainly not a valid reason on which this Court will be justified in invoking the powers under Section 482 Cr.P.C. There is no semblance of doubt left on that aspect. The decision in Moosa v. S.I. of Police (2006 (2) K.L.T. 552) removed the last trace of doubt on that aspect.

3. It is certainly for the petitioner to appear before the learned Magistrate and take part in the proceedings. Needless to say, the petitioner can make application for regular bail and in that case such application will, of course, have to be considered on merits and in accordance with law by the appropriate court.

4. This Crl.M.C. is accordingly dismissed with the above observations.

(R. BASANT)
Judge

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